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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1965

No. 792

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, - - - - - - - - Appellant,

versus

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
RAILWAY LABOR EXECUTIVES' ASSOCIATION, and
ATLANTA EMPLOYEES PROTECTIVE ASSOCIATION, - - - - - - - - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY.

JURISDICTIONAL STATEMENT.

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UNITED STATES OF AMERICA,
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RAILWAY LABOR EXECUTIVES' ASSOCIATION, and
ATLANTA EMPLOYEES PROTECTIVE ASSOCIATION, - - - - - - - *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY.

JURISDICTIONAL STATEMENT.

The Appellant, Louisville and Nashville Railroad Company (L&N), appeals from the judgment of the United States District Court for the Western District of Kentucky, entered on September 1, 1965 (R. 56),[1] dismissing Appellant's amended complaint seeking to

[1]The original judgment was entered August 9, 1965, but was set aside August 31, 1965, so that the District Court might make certain corrections in its opinion. Thereafter, the judgment of September 1, 1965, was entered.

set aside certain portions of a report on further hearing, and the order entered thereon, of the Interstate Commerce Commission in a proceeding styled *Louisville & N. R. Co. Merger,* Finance Docket No. 18845.

OPINIONS BELOW.

The corrected opinion of the District Court (R. 40-50, 53-55), is reported in 244 F. Supp. 337. The report on further hearing of the Interstate Commerce Commission is reported in 312 I.C.C. 676 (R. 9, Ex. F). The District Court's corrected opinion, its order of August 31, 1965 making certain changes in its original opinion (R. 53), its judgment of September 1, 1965, the Commission's report above referred to, and the Commission's order dated October 26, 1961 entered upon such report (R. 10, Ex. G), are reproduced in Appendix A hereof.

JURISDICTION.

This suit was brought under 28 U.S.C. § 1336 to set aside certain portions of a report and order of the Interstate Commerce Commission. The final judgment of the District Court was entered September 1, 1965 (R. 56), and notice of appeal was filed by the Appellant in that court on October 8, 1965 (R. 57-61). The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101(b). The following cases

sustain this Court's jurisdiction: *Burlington Truck Lines, Inc.* v. *United States,* 371 U. S. 156 (1962); *American Trucking Associations, Inc.* v. *United States,* 364 U. S. 1 (1960).

QUESTIONS PRESENTED.

1. Where the Interstate Commerce Commission has recognized and found that an unincorporated terminal company is a separate entity, a separate common carrier, and an employer of its own employees, can it, without supporting evidence or findings, properly conclude that those employees are also the joint or common employees of the carriers which created and control the terminal company?

2. Where a decision of the Interstate Commerce Commission depends upon the determination of questions of law, does the District Court discharge its obligation of judicial review by deferring to the expertise of the Commission?

3. Where certain persons have consistently held themselves out to be the sole and exclusive employees of a terminal company and accepted all of the benefits arising from that relationship, did the Interstate Commerce Commission act arbitrarily, capriciously and in abuse of its discretion in holding those persons to be the joint or common employees of the companies which formed and control the terminal company?

STATUTES INVOLVED.

Sections 1(3)(a) and 5(2) of the Interstate Commerce Act, as amended (49 U.S.C. §§ 1(3)(a) and 5(2)), are set forth in Appendix B hereof.

STATEMENT.

In January, 1955, the appellant herein, Louisville and Nashville Railroad Company, and The Nashville, Chattanooga & St. Louis Railway (NC&StL) jointly applied to the Interstate Commerce Commission for authority under Section 5(2) of the Interstate Commerce Act to merge the properties and franchises of the NC&StL into the L&N for ownership, management and operation (R. 7). Extensive hearings were held, the case was briefed, and in June, 1956, the Hearing Examiner issued his report recommending approval of the proposed merger. Exceptions and replies were filed, following which, in December, 1956, the case was orally argued before the entire Commission. It was at that oral argument that the train of events was set in motion which brings this case before this Court:

At the oral argument, counsel for the Railway Labor Executives' Association contended for the first time that the employee protective conditions which Section 5(2)(f) of the Interstate Commerce Act requires the Commission to impose in rail merger cases "should be made applicable to railroad employees of carriers other than those of the applicants herein, particularly as to the employees of the Atlant[a] Joint Terminals pres-

ently engaged in performing service in connection with the terminal operations of the applicants at Atlanta."[1]

By its report and order of March 1, 1957, the Commission approved the proposed merger. In the course of its report, the Commission recited what had been urged by counsel for the Railway Labor Executives' Association at the oral argument; and it went on to say that "[w]hile it is our intention that the Atlanta Joint Terminal employees are to be protected, we are not prepared to state, on the present record, tha[t] any diminution of employment at the Atlanta terminal would be directly attributable to the action of the applicants in consummating the merger herein authorized. : . ."[2]

The merger of the L&N and NC&StL was consummated in August, 1957 (R. 41).

Both the Atlanta Joint Terminals employees[3] and the L&N[4] asked the Commission for further consideration of the problem of the Atlanta Joint Terminals employees, but the Commission denied the requests. The L&N, in March, 1959, then filed its complaint in the District Court seeking to set aside the Commission's order insofar as it purported to extend to the AJT employees the benefit of the employee protective conditions imposed in the L&N-NC&St.L merger case (R. 41). Thereafter, on June 9, 1959, on its own motion, the

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[1]The quoted language is from *Louisville & N. R. Co. Merger,* 295 I.C.C. 457 (1957), at page 501. The Atlanta Joint Terminals are herein sometimes called AJT.

[2]295 I.C.C. 501, at page 502.

[3]By a petition for reconsideration filed in April, 1957 (R. 32).

[4]By a petition for reconsideration filed in August, 1958 (R. 29). The Commission's report (312 I.C.C. at 677, App. A, p. 19a) erroneously refers to it as a "petition for leave to intervene."

Commission reopened the proceeding for further hearing "to determine the nature and organizational character of Terminals, the relationship of it and its employees, if any, to the Louisville & Nashville, and the extent to which, if any, our report and order herein of March 1, 1957, should be modified insofar as the protective conditions prescribed therein were made applicable to the employees of Terminals."[1] The action in the District Court was then held in abeyance pending the Commission's further action (R. 41).

After the further hearing, briefs, and argument, the Commission, on October 26, 1961, issued its report and order in the reopened proceeding, *Louisville & N. R. Co. Merger,* 312 I.C.C. 676 (1961) (App. A, p. 18a). The Commission said that although it assumed that AJT is a common carrier as that term is defined in Section 1(3)(a) of the Act, this is not dispositive of the issue of the relationship of the AJT employees to the L&N; that even if AJT be considered a carrier for purposes of regulation under the Act, the Commission is not precluded from finding that there exists between AJT employees and L&N an employee-employer relationship; that the fact AJT has been treated as a carrier in the field of labor relations does not preclude such a finding; and that the employees of AJT must be regarded as being, in reality, the employees of the L&N and the other carriers which created the AJT (App. A, p. 30a).

Following denial by the Commission of L&N's request for reconsideration, the L&N in January, 1963, filed its amended complaint in the court below seeking

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[1]312 I.C.C. 676, at page 677 (App. A, p. 20a).

to set aside the Commission's report and order of October 26, 1961 (R. 6). After briefs and argument, the District Court handed down its opinion of August 5, 1965 (R. 40-50), in which it refused "to disturb the conclusions of this experienced agency of the Government charged with manifold duties in the field of transportation, no small part of which is in the area of mergers and affiliations in an effort to 'slow down and arrest the economic deterioration of the American railroads'" (R. 49, App. A, p. 11a).[1]

Judgment was entered dismissing the complaint (R. 56), and this appeal was taken therefrom (R. 57).

THE QUESTIONS ARE SUBSTANTIAL.

This case presents important questions concerning the administrative process, judicial review, and the interpretation of the Interstate Commerce Act. These questions have an importance going beyond the interests of the litigants in this case. Answers to them should be provided by this Court for the guidance of future litigants, the administrative agencies and the lower courts.

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[1]The District Court did not give the source of its quotation which begins with the word "slow."

1. **WHERE THE INTERSTATE COMMERCE COMMISSION HAS RECOGNIZED AND FOUND THAT AN UNINCORPORATED TERMINAL COMPANY IS A SEPARATE ENTITY, A SEPARATE COMMON CARRIER, AND AN EMPLOYER OF ITS OWN EMPLOYEES, CAN IT, WITHOUT SUPPORTING EVIDENCE OR FINDINGS, PROPERLY CONCLUDE THAT THOSE EMPLOYEES ARE ALSO THE JOINT OR COMMON EMPLOYEES OF THE CARRIERS WHICH CREATED AND CONTROL THE TERMINAL COMPANY?**

The central issue in this case is whether the employees of AJT are the employees of the L&N and thus may be entitled to the benefit of the protective conditions which the Commission imposed in the L&N-NC&StL Merger case. The Commission ordered a hearing to determine (1) the nature of the AJT, (2) its organizational character, and (3) the relationship of the AJT and its employees to the L&N. It further sought to determine how its prior report and order should be modified insofar as the protective conditions are concerned.

At the hearing the appellant established that the AJT is an unincorporated association, a carrier as defined in Section 1(3)(a) of the Interstate Commerce Act, and the employer of its own employees. The conclusion that the appellant sought to have the Commission draw from these premises was that the AJT and its employees are separate and distinct from the L&N and its employees.

The Commission although assuming that the AJT must be considered "a common carrier as that term is defined in Section 1(3)(a) of the Interstate Act;" "a carrier for purposes of regulation under the act," and "a carrier in the field of labor relations," said that the Commission was not precluded thereby "from finding

that there exists between Terminals' employees and the Louisville & Nashville an employee-employer relationship." The Commission concluded that AJT "is not a business organization independent of the railroads which created, operate, and control it as their joint agency," and that the AJT employees were the joint or common employees of the L&N and the other carriers which had formed the AJT (312 I.C.C. 683-684, App. A, p. 30a).

In the court below, the Commission and the United States, in Paragraph V of their answer (R. 15), admitted that the AJT is a separate and distinct common carrier and a separate and distinct unincorporated association but alleged that it has common or joint employees with the L&N. On brief, they asserted that "[w]hether Terminals (an unincorporated association) is a legal entity is quite irrelevant" (R. 38); that "we concede that Terminals is a carrier or other legal entity subject to the Act" (R. 37); and that "[j]ust as we concede that Terminals may be considered a 'carrier,' we also concede that it may be an employer" (R. 39). The Commission and the United States went on to argue that Section 5(2)(f) permits the determination in a proper case that the employees of one carrier are also the employees of another, and that although the AJT is an employer of its own employees, the Commission could conclude that "L. & N. is also an employer of these same workers" (R. 39).

It will at once be seen that the Commission was quite uncertain as to the basis upon which it rested its conclusion that AJT employees are L&N employees.

In one breath, it was saying that the AJT is not a business organization independent of the railroads which created it. In the next it was conceding (quite correctly) that AJT was a distinct entity, carrier, and employer and concluding (erroneously) that AJT employees were nevertheless L&N employees. The uncertainty of its premises is alone sufficient reason for declaring the order invalid. The Commission itself has said:

> "In coming before us for authorization, Allegheny must be understood to have decided that it is either a carrier . . . or a person which is not a carrier. . . . These conditions of status are exclusive of each other and cannot simultaneously characterize an individual or an entity." *Louisville & J. B. & R. Co. Merger,* 290 I.C.C. 725, 734 (1955).

In *Nashua Motor Express, Inc.* v. *United States,* D. C. New Hampshire, 230 F. Supp. 646 (1964), an order of the Commission which was rested on alternative bases was set aside, the Court saying (p. 652):

> "From this, we must conclude at best that it is not at all clear what the Commission has purported to find, or, at worst, that the finding embodied in the second horn of the dilemma is wholly arbitrary."

The Commission's contradictory statements are reflections of the only two possible theories—and they are conflicting—under which it could be contended that the L&N is the employer of those who are the employees of the AJT: The first is that the L&N is the

employer because it is one of the three carriers which established the unincorporated association known as the AJT. Under this theory, the unincorporated association is treated as if it did not exist. The second is that the L&N as a carrier and the AJT as a carrier have jointly employed the AJT workers. The first theory is contrary to the Interstate Commerce Act and the expressions of this Court. The second is without validity in this case because there is neither evidence nor findings to support it.

As for the first theory, the Congress has declared that, whatever may have been the common-law rule, for the purpose of administering the pertinent provisions of the Interstate Commerce Act an association shall be regarded as an entity. In Section 1(3)(a) it has declared that the word "carrier" is synonymous with "common carrier" and has defined the latter term to mean "all persons, natural or artificial," engaged in transportation as defined by Section 1(1) of the Act. It has then defined the term "person" as follows:

> "The term 'person' as used in this chapter includes an individual, firm, copartnership, corporation, company, association, or joint-stock association; . . ."

Under this definition an unincorporated association engaged in common-carrier service is to be regarded as an entity and not as the mere aggregate of its creators.

The definition of "person" as given in Section 1(3)(a) was taken from Section 203(a)(1) of the

Motor Carrier Act, 49 U.S.C. §303(a), and in *United States* v. *A.&P. Trucking Co.*, 358 U. S. 121 (1958), this Court held that Congress had in that section changed the common-law rule and had declared that partnerships were to be treated as entities. If partnerships are to be so treated, so too are associations, for they are both included in the same statutory definition of "person."

In reaching its conclusions regarding the status of the AJT, the Commission completely disregarded the definitions provided by the Congress and merely applied the common-law concept of an unincorporated association. This was error.

The Commission's action also runs counter to Section 5(2), for the term "carrier" as used therein means "carrier" as defined in Section 1. If the AJT is a carrier "for purposes of regulation," as the Commission has correctly said, it is a carrier under Section 5(2)—a carrier separate and distinct from the L&N. The entire proceeding before the Commission was concerned with the regulation of carriers, and the power of the Commission to impose employment protective conditions under Section 5(2)(f) depends directly upon its power to regulate carriers.

Thus, since the AJT is a separate carrier for purposes of regulation, the Commission should have held that the AJT employees were not entitled to the benefits of the protective conditions imposed in the L&N-NC&StL Merger case; for the Commission had disavowed (312 I.C.C. 684, App. A, p. 30a) any intention of protecting the AJT employees if they are not L&N

employees. The propriety of the Commission's action must be judged solely on the grounds invoked by the Commission, *Securities & Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80 (1943) and 332 U. S. 194 (1947).

This Court should correct the erroneous result: Cf. *Norton* v. *Warner Co.*, 321 U.S. 565 (1944) at page 569:

> "If the award were to stand, there would be brought within the Act a group of workers whom we do not believe Congress intended to include."

The other possible theory, that the L&N as a carrier and the AJT as a carrier jointly employed the AJT workers, is not supported by either evidence or findings. It therefore cannot pass the tests of legality set by Section 10 of the Administrative Procedure Act, 5 U.S.C. §1009. There is no suggestion anywhere in the record that the L&N and the AJT jointly employed the AJT employees. On the contrary, there was evidence that when the AJT employees went on the L&N property to do some emergency work, they regarded the L&N as a "foreign line" and claimed premium pay for the work. The AJT, as a terminal company, handled L&N business no differently from the way in which it handled the business of the other lines using its facilities. The following rulings are applicable here:

> "The agency must make findings that support its decision, and those findings must be supported by substantial evidence." *Burlington Truck Lines, Inc.* v. *U. S.*, 371 U. S. 156, 168 (1962).

"Findings supported by substantial evidence are required." *I.C.C.* v. *J-T Transport Co.*, 368 U. S. 81, 93 (1961).

"A finding without evidence is arbitrary and baseless." *I.C.C.* v. *Louisville & N. R. Co.*, 227 U.S. 88, 91 (1913).

The facts of the present case differ from those in *Railway Labor Executives' Association* v. *United States*, D. C. Va., 216 F. Supp. 101 (1963), cited by the court below (R. 47; App. A, p. 8a). In that case the two carriers using the passenger station there involved were held to have jointly employed the station employees which, for convenience, were carried on the payroll of one of the carriers. The passenger station was not a separately operated common carrier. But here, the carriers which were to use the AJT facilities set up a separate unincorporated organization to operate the terminals; that organization is conceded by the Commission and the United States to be a carrier in its own right; and that carrier employed its own employees who did all of the work of the terminals, whether that work involved the handling of L&N business or the business of some other carrier. If the AJT as a separate carrier is to be ignored, every terminal company in the country may find that it, too, is to be ignored and that its employees are the employees of the trunk lines which use its facilities. Such a result would be most unsettling to existing employer-employee relations.

2. WHERE A DECISION OF THE INTERSTATE COMMERCE COMMISSION DEPENDS UPON THE DETERMINATION OF QUESTIONS OF LAW, DOES THE DISTRICT COURT DISCHARGE ITS OBLIGATION OF JUDICIAL REVIEW BY DEFERRING TO THE EXPERTISE OF THE COMMISSION?

The opinion of the court below is devoted primarily to a recitation of the contentions of the parties, followed by a single paragraph in which the court resolved all questions by deferring to the expertise of the Commission. The court accepted the Commission's view that the existence of the employer-employee relationship is purely a question of fact. It did not resolve the problem presented by the Commission's treating the AJT as being a carrier for purposes of regulation and then treating it as if it did not exist at all. It did not examine into whether there was evidence or findings to support a determination that the employees of one carrier are also the employees of another. All of these questions were avoided by bowing to the Commission's expertise. This was error.

Section 10(e) of the Administrative Procedure Act, 5 U.S.C. §1009(e), provides in part:

> "So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action."

This case did not present a question addressed to the discretion of the Commission, such as, for example, whether a certificate or permit shall be issued. The

fundamental issue was one of law, to be passed upon by the courts. The District Court was clearly wrong in deferring, in this case, to the Commission's "wisdom and experience."

This Court has held that the question of the existence of the employment relation is one of law:

> "The administrative decision thus turned upon a question of law, whether a field deputy marshal during the period from December 16, 1895 to December 30, 1902, was an employee of the United States. The administrative determination of that question is open to review in the present suit, and should have been considered and decided by the court below." *Dismuke* v. *United States,* 297 U. S. 167, 173 (1936).

Whether the question here be regarded as one of law within the meaning of the *Dismuke* case, or one of law because of a misconstruction of the Interstate Commerce Act (*Norton* v. *Warner Co.,* 321 U. S. 565, 569 (1944)), or one of law as to the adequacy of findings and supporting evidence, the duty of the District Court was the same: To make its own evaluation of the correctness of the conclusions of the Commission. This the District Court failed to do, and its error should be corrected.

> "Reviewing courts are not obliged to stand aside and rubber stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute. Not only is such review always properly within the judicial

province, but courts would abdicate their responsibility if they did not fully review such administrative decisions.

. . . . .

"Since the order therefore rested on 'an erroneous legal foundation,' the Court of Appeals properly refused to enforce it." *NLRB* v. *Brown,* 380 U. S. 278, 13 L. Ed. 839, 849 (1965).

"The deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress." *American Ship Bldg. Co.* v. *NLRB,* 380 U. S. 300, 13 L. Ed. 855, 867 (1965).

"Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function." *Universal Camera Corp.* v. *NLRB,* 340 U. S. 474, 490 (1951).

Even in cases involving agency discretion, the requirements of the Administrative Procedure Act relating to procedure and findings must be observed.

"Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, *expertise,* the strength of modern government, can become a monster which rules with no practical limits on its discretion.'" *Burlington Truck Lines, Inc.* v. *United States,* 371 U. S. 156, 167 (1962).

3. WHERE CERTAIN PERSONS HAVE CONSISTENTLY HELD THEMSELVES OUT TO BE THE SOLE AND EXCLUSIVE EMPLOYEES OF A TERMINAL COMPANY AND ACCEPTED ALL OF THE BENEFITS ARISING FROM THAT RELATIONSHIP, DID THE INTERSTATE COMMERCE COMMISSION ACT ARBITRARILY, CAPRICIOUSLY AND IN ABUSE OF ITS DISCRETION IN HOLDING THOSE PERSONS TO BE THE JOINT OR COMMON EMPLOYEES OF THE COMPANIES WHICH FORMED AND CONTROL THE TERMINAL COMPANY?

Under Section 10(e) of the Administrative Procedure Act, 5 U.S.C. § 1009(e), a court which is reviewing agency action is required to hold unlawful and set aside agency action, findings, and conclusions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." In view of the overwhelming evidence of the separateness of the AJT and its employees from the L&N, the Commission's conclusion that the AJT employees are L&N employees is arbitrary, capricious and an abuse of the Commission's discretion—indeed, the Commission had no discretion in the matter.

It was shown without contradiction that for fifty years the AJT employees have held themselves out to be the sole employees of the AJT and not employees of the L&N; that they have had their own collective bargaining representatives, who negotiated their own collective bargaining agreements with the AJT; that, through mediation, they forced the AJT to become a party to the Washington Job Protection Agreement[1] a year before the L&N was persuaded by its employees to become a party; that they sought and obtained benefits under the agreement last mentioned as sole em-

[1]This Agreement is discussed in *Railway Labor Executives' Assn.* v. *United States,* 339 U. S. 142, 147 (1950).

ployees of the AJT and alleged that the AJT was a party thereto and that the L&N was not; that they secured a union-shop agreement with the AJT at a time when there was no such agreement on the L&N; that as sole employees of the AJT they used the services of the National Mediation Board and the National Railroad Adjustment Board to settle their differences with the AJT; and that they demanded and received penalty pay when, in emergencies, they were asked to work on the L&N, the AJT employees asserting that the L&N was a "foreign line," meaning a line by which they were not employed (App. 7a-8a, 25a-26a).

Findings without support in the evidence and findings which are contrary to the evidence cannot stand. It is the duty of the courts to strike them down.

> "A finding without substantial evidence to support it—an arbitrary or capricious finding—does violence to the law. It is without the sanction of the authority conferred. And an inquiry into the facts before the Commission, in order to ascertain whether its findings are thus vitiated, belongs to the judicial province and does not trench upon, or involve the exercise of, administrative authority." *Federal Radio Commission* v. *Nelson Bros. Co.*, 289 U. S. 266, 277 (1933).

> "An order based upon a finding made without evidence, *The Chicago Junction Case,* 264 U. S. 258, 263, or upon a finding made upon evidence which clearly does not support it, *Interstate Commerce Commission* v. *Union Pacific R. R.,* 222 U. S. 541, 547, is an arbitrary act against which courts afford relief." *Northern Pac. Ry. Co.* v. *Dept. of Public Works,* 268 U. S. 39, 44-45 (1925).

"In cases arising under the Interstate Commerce Act, the provisions of which contemplate an investigation or inquiry conducted with some formality, followed by a written report and decision as the basis of the orders, it has been repeatedly held by this court that an administrative order made indisputably contrary to the evidence, or without any evidence, must be deemed to be arbitrary, and therefore subject to be set aside." *Louisville & N. R. Co.* v. *Finn,* 235 U. S. 601, 606 (1915).

CONCLUSION.

It would be easy enough for this Court to dispose of this case by summary affirmance; but if it were to do so it would join the Court below and the Commission in denying the Appellant a basic right: The right to a disposition of its case which follows the correct rules of law, which clearly states the reasons for the rulings, and which is supported by proper findings based on substantial evidence. Cf. Black, J., dissenting, *Chicago & E. I. R. Co.* v. *United States,* 375 U. S. 150 (1963).

The Commission's report was contradictory and unclear, and the confusion as to the basis for the Commission's ruling was increased by the new theories of justification for it which were advanced by the Commission and the United States in pleadings and brief below. The concessions made by the Commission and the United States required a judgment in appellant's favor.

The Commission's errors might have been righted had the Court below given the Appellant the judicial

review to which it was entitled. But it didn't. It refused to grapple with the substantial legal questions presented. It abdicated its responsibility in the mistaken belief that this was a case within the expertise of the Commission and that what the Commission had decided was binding on it. This was not judicial review; it was the judicial rubber-stamping of approval on Commission action.

"[T]he appellant has a grievance, and one that is substantial and not merely colorable or fanciful. Somewhere must reside judicial power to adjudicate it, and grant him . . . adequate relief" (*Teague* v. *Brotherhood,* C.A. 6, 127 F. 2d 53, 56 (1942)). This Court was that "somewhere": *Steele* v. *Louisville & N. R. Co.,* 323 U. S. 192 (1944). It is that "somewhere" in the case at bar.

Probable jurisdiction should be noted and the case set down for argument on the merits.

Respectfully submitted,

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